

Message Text

SECRET

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ACTION NODS-00

INFO OCT-01 ISO-00 /001 W
-----119421 041924Z /50
O 041700Z MAR 78 ZFF-6
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TO SECSTATE WASHDC IMMEDIATE 5288
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AMEMBASSY TEL AVIV IMMEDIATE

S E C R E T SECTION 1 OF 3 AMMAN 2078

EXDIS (HANDLE AS NODIS)

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FROM ATHERTON

U.S. DEL NO. 55
E.O. 11652: XGDS-2
TAGS: PORG, IS, UNSC
SUBJECT: RESOLUTION 242: WITHDRAWAL ON ALL THREE FRONTS

REF: STATE 49594

1. SUMMARY: AT MEETING WITH BARAK AND ROSENNE
ON MARCH 2, I PRESENTED MUCH OF ARGUMENTATION PRO-
VIDED REFTEL TO SUPPORT U.S. INTERPRETATION THAT
WITHDRAWAL PROVISION OF RESOLUTION 242 APPLIES TO
THE WEST BANK. I STRESSED THAT IT WAS OUR
IMPRESSION THAT WE HAD A MUTUAL UNDERSTANDING
WITH ISRAEL ON SUCH AN INTERPRETATION
EVER SINCE 1967. I ALSO EMPHASIZED THAT THE
PHRASE "ON ALL FRONTS" HAD NOT BEEN USED IN THE
PAST PRECISELY BECAUSE THERE HAD BEEN NO
PREVIOUS CONTROVERSY OVER THIS POINT. ADMITTING
THAT HE COULD NOT INTELLECTUALLY DENY THE
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POINTS I HAD MADE, BARAK ATTEMPTED TO DEFEND
THE INTERPRETATION OF THE CURRENT ISRAELI
GOVERNMENT ON THE FOLLOWING GROUNDS: (1)
THE TEXT OF 242 DOES NOT CONTAIN THE PHRASE
"ON ALL FRONTS;" (2) ISRAELI REPRESENTATIVES
MAY HAVE ADDRESSED THIS SUBJECT IN THE PAST,
BUT NOT NECESSARILY IN THE NAME OF THE GOVERN-

MENT; (3) ANALYSIS OF THE TEXT OF 242, IN THE ABSENCE OF ITS NEGOTIATING HISTORY, ALLOWS IT TO BE INTERPRETED EITHER AS APPLYING, OR AS NOT APPLYING, TO THE WEST BANK; AND (4) THERE HAD BEEN NO AMERICAN PUBLIC STATEMENT CONCERNING THE APPLICABILITY OF 242 TO ALL FRONTS UNTIL JUNE 1977. AT BARAK'S SUGGESTION, I PROVIDED ROSENNE THE FOLLOWING MORNING WITH THE TEXT OF THOSE PORTIONS OF REFTEL ON WHICH I DREW FOR MY PRESENTATION, MAKING IT CLEAR THAT IT HAD NO OFFICIAL STANDING AS A U.S. GOVERNMENT LEGAL POSITION. TEXT OF WHAT I GAVE ROSENNE BEING SENT SEPTEL.
END SUMMARY.

2. I MET WITH ISRAELI ATTORNEY GENERAL BARAK AFTERNOON OF MARCH 2 IN ORDER TO SET FORTH BASIS OF THE UNITED STATES INTERPRETATION THAT THE WITHDRAWAL PROVISION OF RESOLUTION 242 APPLIES ON ALL THREE FRONTS. WITH BARAK WAS MFA LEGAL ADVISOR ROSENNE; WITH ME WERE AMBASSADOR LEWIS, STERNER, KORN AND KIRBY.

3. I BEGAN BY CLARIFYING THE TERMS OF REFERENCE UNDER WHICH WE WERE MEETING. I SAID THAT WE FELT IT WOULD BE USEFUL TO DISCUSS IN SOME DETAIL THE REASONING
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UNDERLYING THE U.S. VIEW THAT THE UNIVERSAL AND ONLY INTERPRETATION HAS ALWAYS BEEN THAT 242 APPLIES ON ALL FRONTS. IN OUR VIEW THIS HAS BEEN THE ONLY INTERPRETATION BEGINNING WITH THE NEGOTIATIONS PRIOR TO ADOPTION OF 242 IN LATE 1967. THE SPECIFIC PHRASE "ON ALL FRONTS," I OBSERVED, HAS NOT BEEN USED IN THE PAST PRECISELY BECAUSE THIS ISSUE HAD NEVER BEEN IN DOUBT. WHEREAS THE PARTIES MAY HAVE DIFFERED IN THEIR INTERPRETATIONS AS TO THE EXTENT OF WITHDRAWAL CALLED FOR BY 242, THERE HAD NEVER BEEN CONFUSION THAT WITHDRAWAL WAS ANTICIPATED ON ALL FRONTS.

4. BARAK ASKED IF HE COULD RAISE SOME "ACADEMIC" QUESTIONS BEFORE I BEGAN MY PRESENTATION. HE FIRST TRIED TO MAKE THE POINT THAT "ON ALL FRONTS" NEED NOT REFER TO WITHDRAWAL, EXPLAINING THAT THE EXTENT OF WITHDRAWAL ON ANY ONE FRONT COULD CONCEIVABLY BE ZERO. FOR THIS REASON HE FELT THAT OUR USE OF THE PHRASE "ON ALL FRONTS" WAS AMBIGUOUS.

5. BARAK THEN OBSERVED THAT THE U.S. DIVIDES THE OCCUPIED TERRITORIES INTO DISCRETE POLITICAL UNITS

AND CLAIMS THAT THERE MUST BE WITHDRAWAL WITHIN EACH UNIT. HE SPECIFICALLY REFERRED TO GAZA, AND ASKED IF THIS IS CONSIDERED A SEPARATE POLITICAL UNIT, FROM WHICH WITHDRAWAL WOULD ALSO BE REQUIRED BY THE U.S. INTERPRETATION. TO THIS I REPLIED THAT THE PRINCIPLE OF WITHDRAWAL WOULD SEEM TO APPLY ALSO TO GOZA. HYPOTHETICALLY, OF COURSE, IT MIGHT BE POSSIBLE BY AGREEMENT BETWEEN THE PARTIES THAT NO WITHDRAWAL WOULD TAKE PLACE ON A GIVEN FRONT.

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TO SECSTATE WASHDC IMMEDIATE 5289
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EXDIS (HANDLE AS NODIS)

FROM ATHERTON

6. BARAK THEN GOT TO THE MAIN POINT OF HIS "ACADEMIC" EXERCISE. HE SAID THAT WHILE THE U.S. MAY INTERPRET 242 AS APPLYING TO ALL FRONTS, IT IS IMPORTANT TO LOOK AT WHAT THE TEXT OF 242 IN FACT SAYS. THE RESOLUTION, HE CONTINUED, VIEWS THE TERRITORIES AS ONE UNIT CALLED "TERRITORIES OCCUPIED." THE CURRENT GOVERNMENT, HE OBSERVED, HOLDS THAT ISRAEL HAS FULFILLED THIS ASPECT OF 242 IF IT WITHDRAWS FROM ONE OF THE TERRITORIES, AND THAT THERE IS NO REQUIREMENT TO WITHDRAW FROM EACH OF THE POLITICAL UNITS ENVISAGED BY THE UNITED STATES. HE POINTED OUT THAT PRIME MINISTER BEGIN HAD SPOKEN IN THIS VEIN TO PRESIDENT CARTER.

7. AT THIS POINT ROSENNE BROKE IN TO SAY THAT HE HAD READ ALL THE DEBATES ON RESOLUTION 242 AND COULD FIND NO REFERENCE TO WITHDRAWAL BEING REQUIRED ON ALL FRONTS.

I RESPONDED THAT THIS IS THE VERY POINT THAT I WAS TRYING TO STRESS AT THE OUTSET. THE REASON HE COULD FIND NO SUCH REFERENCE WAS PRECISELY BECAUSE
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THE FACT THAT 242 APPLIED TO ALL FRONTS WAS NOT AMONG THE DISPUTED ISSUES WHEN THE RESOLUTION WAS BEING ACTIVELY DISCUSSED. I ADDED THAT I FELT IT NECESSARY TO REFER TO PRIVATE DIPLOMATIC EXCHANGES CONCERNING 242 AND WOULD BE DOING SO IN THE COURSE OF MY PRESENTATION.

8. I THEN MADE MY PRESENTATION, DRAWING SELECTIVELY BUT EXTENSIVELY FROM REFTEL. (AT BARAK'S REQUEST I GAVE TO ROSENNE THE NEXT MORNING A DOCUMENT QUOTING THOSE PORTIONS OF REFTEL WHICH I HAD USED IN MY PRESENTATION, COVERED BY A PERSONAL NOTE FROM ME STRESSING THAT THE DOCUMENT HAS NO FORMAL OR OFFICIAL STANDING AS A DEFINITIVE U.S. GOVERNMENT LEGAL POSITION. I AM SUBMITTING THE TEXT OF WHAT I GAVE TO ROSENNE BY SEPTTEL.)

9. THROUGH MOST OF MY REMARKS BOTH BARAK AND ROSENNE MERELY LISTENED AND TOOK OCCASIONAL NOTES. WHEN I REFERRED TO THE EXPLANATIONS OF VOTE AT THE TIME THAT 242 WAS ADOPTED, HOWEVER, ROSENNE ASKED IF THE ASSURANCES GIVEN TO KING HUSSEIN CONCERNING WITHDRAWAL ON THE WEST BANK, WHICH I HAD JUST REFERRED TO, HAD BEEN MADE PUBLIC, SINCE HE COULD FIND NO REFERENCE TO SUCH ASSURANCES IN THE PUBLIC RECORD. I RESPONDED THAT BOTH OUR ASSURANCES TO HUSSEIN AND OUR BRIEFINGS TO ISRAELI REPRESENTATIVES CONCERNING THOSE ASSURANCES HAD BEEN VERY CLOSELY HELD. AMBASSADOR LEWIS POINTED OUT THAT IT WAS CLEAR THAT SUCH ASSURANCES WERE NO LESS RELEVANT FOR HAVING BEEN MADE PRIVATELY, AND THAT THE DIPLOMATIC EXCHANGES THAT I HAD REFERRED TO CERTAINLY REFLECT A MUTUAL UNDERSTANDING BETWEEN THE U.S. AND ISRAEL AT THE TIME THAT 242 ANTICIPATED WITHDRAWAL ON THE WEST BANK. I AGREED
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WITH BARAK'S CHARACTERIZATION OF THE SITUATION AT THE TIME, I.E., THAT NO ONE SAID "ON ALL FRONTS" SPECIFICALLY BUT THAT ALL UNDERSTOOD 242 IN THAT LIGHT.

10. AT THE POINT IN MY PRESENTATION WHEN I MENTIONED THE FORMAL ISRAELI ACCEPTANCE ON AUGUST 3, 1970, OF THE U.S.

INITIATIVE, IN WHICH ISRAEL RELATED ITS ACCEPTANCE TO DISCUSSIONS "WITH THE UAR (JORDAN)", BARAK ASKED IF SUCH A QUOTATION COULD NOT BE INTERPRETED TO APPLY TO BOTH THE UAR AND JORDAN TOGETHER RATHER THAN TO THEM SEPARATELY. THIS WAS AN OBVIOUS REFL OF HIS PRIMARY POINT DURING THE ACADEMIC DISCUSSION DESCRIBED IN PARA 6 ABOVE.

1. WHEN I FINISHED MY PRESENTATION, BARAK SUGGESTED THAT IT MIGHT BE POSSIBLE TO AGREE ON THREE POINTS. FIRST, THE EXPRESSION "ON ALL FRONTS" IS NOT USED IN THE TEXT OF RESOLUTION 242. SECOND, AN OBJECTIVE READING OF THE TEXT COULD SUPPORT EITHER THE AMERICAN OR THE ISRAELI INTERPRETATION. THIRD, THE HISTORICAL RECORD WAS THAT THE U.S. AND PREVIOUS ISRAELI GOVERNMENTS UNDERSTOOD EACH OTHER "POLITICALLY." I SAID I WAS NOT IN A POSITION TO REACH SUCH AN "AGREEMENT," BUT IF BARAK WISHED TO PROPOSE IT, I WOULD SUBMIT IT TO THE DEPARTMENT FOR COMMENT. ON THE THIRD POINT, AMBASSADOR LEWIS REMARKED THAT CHANGES AT THE POLITICAL LEVEL COULD NOT BE ALLOWED TO AFFECT UNDERSTANDINGS REACHED BETWEEN GOVERNMENTS. I OBSERVED THAT, IN ANY CASE, IT WAS IMPORTANT TO NOTE THAT ISRAEL AND THE U.S. WERE OPERATING FROM A COMMON PREMISE AT THE TIME WHEN 242 WAS ADOPTED.

12. ROSENNE THEN INTERJECTED INTO THE DISCUSSION REFERENCES TO THREE DOCUMENTS, THE MERITS OF WHICH I AM IN NO POSITION TO JUDGE AND WHICH I AM REPORTING FOR THE RECORD. HE REFERRED TO A STATEMENT BY SYRIA IN THE UN ON NOVEMBER 22, 1967, IN WHICH SYRIA REJECTED 242 AS NOT SUFFICIENTLY SPECIFIC AND OPEN TO THE
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INTERPRETATION THAT ISRAEL COULD ASK FOR TERRITORIAL CHANGE. HE ALSO MENTIONED A UN STATEMENT BY THE SOVIET UNION ON NOVEMBER 15, 1967 IN WHICH THE USSR REJECTED WHAT WAS THEN CALLED THE U.S. PROPOSAL BECAUSE IT LACKED A CLEAR DEFINITION OF THE WITHDRAWAL PROVISION. HE MENTIONED, FINALLY, A LETTER FROM AMBASSADOR TEKOA TO JARRING DATED FEBRUARY 26, 1971, STATING THAT ISRAEL WILL NOT WITHDRAW TO THE LINES OF JUNE 4, 1967.

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EXDIS (HANDLE AS NODIS)

FROM ATHERTON

13. ROSENNE RECALLED THAT, AT OUR MEETING WITH DAYAN EARLIER IN THE DAY, DAYAN HAD COMMENTED THAT THE AMERICAN INTERPRETATION OF 242 IS KNOWN AND THAT ISRAEL'S IS DIFFERENT. AMBASSADOR LEWIS RESPONDED TO THIS BY OBSERVING THAT THAT IS EXACTLY THE PROBLEM WHICH WE ARE DISCUSSING. LEWIS STRESSED THAT STATEMENTS MADE BY FOREIGN MINISTERS AT CERTAIN POINTS IN TIME MUST BE SEEN TO REMAIN RELEVANT EVEN THOUGH GOVERNMENTS MAY CHANGE. OTHERWISE, MEANINGFUL DIPLOMACY BECOMES VERY DIFFICULT.

14. BARAK ADMITTED THAT HE COULD NOT INTELLECTUALLY DENY THE POINTS I HAD MADE, BUT SUGGESTED AGAIN THAT IT SHOULD BE POSSIBLE TO AGREE ON CERTAIN PRINCIPLES. FIRST, A TEXTUAL READING OF 242 SHOWS NO REFERENCE TO "ON ALL FRONTS". SECOND, REPRESENTATIVES OF ISRAEL MAY HAVE SAID CERTAIN THINGS IN THE PAST, BUT THEY DID NOT NECESSARILY DO SO IN THE NAME OF THE GOVERNMENT. (HE MENTIONED THAT BEGIN HAD ASKED HIM TO MAKE THIS POINT.)

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THIRD, AN ANALYSIS OF THE TEXT OF 242, IN THE ABSENCE OF ITS NEGOTIATING HISTORY, ALLOWS FOR INTERPRETATION EITHER THAT IT DOES OR THAT IT DOES NOT APPLY TO THE WEST BANK. BARAK NOTED HERE THAT THE ISRAELI JUDICIAL SYSTEM DOES NOT REQUIRE THAT COURT DECISIONS BE MADE ON THE BASIS OF NEGOTIATING OR LEGISLATIVE HISTORY. FOURTH, THERE HAD BEEN NO PUBLIC STATEMENT BY THE UNITED STATES THAT 242 DOES OR DOES NOT APPLY TO THE WEST BANK UNTIL JUNE, 1977.

15. ROSENNE THEN NOTED THAT THE ASSURANCES TO JORDAN THAT I HAD CITED WERE MADE PRIOR TO THE 1974 RABAT SUMMIT, AT WHICH TIME JORDAN ALLOWED ITSELF TO BE REPLACED BY THE PLO AS THE VALID NEGOTIATOR FOR THE WEST BANK. HE WONDERED, THEREFORE, IF THIS DID NOT CONSTITUTE A SUFFICIENTLY SIGNIFICANT CHANGE IN CIRCUMSTANCES TO MAKE THE ASSURANCES NO LONGER RELEVANT.

16. BARAK SAID THAT HE WOULD ATTEMPT TO SUM UP THE DISTINCTION BETWEEN THE AMERICAN AND THE ISRAELI POSITIONS. HE SAID THE U.S. EMPHASIZES THE FACT THAT, BEGINNING IN SEPTEMBER 1967, ISRAEL AND THE U.S. MUTUALLY AGREED THAT THE WITHDRAWAL PROVISION OF 242 WOULD APPLY TO THE WEST BANK. ISRAEL, ON THE OTHER HAND, EMPHASIZES THE FACT THAT SINCE "ON ALL FRONTS" DOES NOT APPEAR IN THE TEXT OF THE RESOLUTION, THE TEXT THEREFORE CARRIES WITHIN ITSELF THE POTENTIAL FOR EITHER INTERPRETATION. I SAID I WOULD LIKE TO REEMPHASIZE THE POINT THAT THE CURRENT ISRAELI INTERPRETATION OF 242 CONSTITUTES A DEPARTURE FROM THE INTERPRETATION OF PAST ISRAELI GOVERNMENTS. I ALSO REITERATED IN CLOSING THAT THE REASON WHY SPECIFIC REFERENCES TO THE APPLICABILITY OF 242
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TO ALL FRONTS CANNOT BE FOUND IN PAST RECORDS IS PRECISELY BECAUSE THERE HAD NEVER BEEN ANY DOUBT ON THIS ISSUE.
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Message Attributes

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